

a very significant cumulative socioeconomic impact and is not a "...minor impact..." on farmers and farm workers in the County's agricultural community.

(25) However, the Draft EIR/EIS does indicate within its "Alternatives" that a water transfer would limit future agricultural growth in Imperial County due to less acres being farmed and therefore fewer agricultural-related jobs would be created and therefore less demand for secondary agriculture-related purchases/services.

Like other rural farming communities, Imperial County has a fragile economy, typically overly dependent on ever-changing markets. Unemployment is typically higher than in urban areas. Imperial County in particular historically has had one of the highest unemployment rates in the State. If the conservation method of "fallowing" is used to facilitate the water transfer, not only will farm laborers lose employment, but also secondary employment in the farm service industry. The Draft EIR/EIS identifies a potential job loss of 1,400 due to transfer and conservation by fallowing alone. What are the fiscal costs of increased unemployment (e.g. job training, crime, assistance payments)? This reduction in employment will have a devastating "domino effect" on Imperial County's economy. Any reduction in agricultural production could have a serious negative effect on a farming community with direct impacts on laid-off farm laborers, seed, pesticide, and farm implement sellers, and indirect impacts on commercial, housing and educational institutions. The draft document does not adequately assess the negative socioeconomic impacts of "fallowing" on Southern California, the region or on the national economy. The Final EIR/EIS should include mitigation measures to offset the negative socioeconomic impacts described above.

(26) Additionally, we incorporate by reference the comments and analysis provided for in the attached report by Economics Research Associates (ERA). (Attachment "B")

### SALTON SEA

(28) Pursuant to the Imperial County General Plan, *Conservation/Open Space Element*, the Salton Sea is a vital recreation and open space component to Imperial Valley, providing water-orientated recreation (i.e., fishing, boating), and wildlife observation (i.e. bird and species watching), including the annual bird festival. The *Conservation/Open Space Element*, Goal 2, provides, "...The County will preserve the integrity, function, productivity, and long-term viability of environmentally sensitive habitats, and plant and animal species..." "...Objective 2.1 Conserve wetlands, fresh water marshes, and riparian vegetation and Objective 2.2 Protect significant fish, wildlife, plant species, and their habitats..." Additionally, Goal 8, states "...The County will conserve, protect, and enhance the water resources in the planning area..." along with "...Objective 8.1 Protect all bodies of water, e.g. Salton Sea, and water courses for their continued use and development, and Objective 8.5 Protect and improve water quality and quantity for all water bodies in Imperial County..." In the *Water Element* of the County's General Plan, Goal 2, it states "...Long-term viability of the Salton Sea, Colorado River, and other surface waters in the County will be protected for sustaining wildlife and a broad range of

### Response to Comment L1-27

The Draft EIR/EIS reports the total jobs that are anticipated to be lost within the Imperial County economy as a result of fallowing in Section 3.14. These job loss estimates include job losses in farm support industries. Also, refer to the Master Response for *Socioeconomics—Property Values and Fiscal Impact Estimates* in Section 3 in this Final EIR/EIS and see responses to Comments L1-24 and L1-25.

### Response to Comment L1-28

Comment noted. See the referenced attachment for full response.

### Response to Comment L1-29

Refer to the Master Response on *Biology—Approach to Salton Sea Habitat Conservation Strategy and Recreation—Mitigation for Salton Sea Sport Fishery* in Section 3 of this Final EIR/EIS.

ecological communities..." These are but a few County mandates for preserving Imperial Valley's unique and fragile open spaces, waterways and wildlife habitats. The Final EIR/EIS should address and propose mitigation measures to offset these impacts.

(28) The DEIS/EIR "No Project Alternative" with regard to the Salton Sea expects the mean surface elevation of the Sea to drop approximately 7 feet over the next 75 years, thereby decreasing the surface area of the Sea approximately 16,000 acres or roughly 25 square miles. Additionally, under the "No Project Alternative", the DEIR/EIS (Section 3.1.4.4) maintains that water quality would decrease and salinity would rise to 879 mg/L from present concentrations, while the concentration in the dissolved solids (TDS) of the Sea will rise as high 86,000 mg/L TDS.

According to Section 3.14.3.4, this decrease in level and water quality in the Sea translates into "...all operational boat launching and mooring facilities would become non-operational in the year 2010. Also...the Salton Sea is predicted to become too saline to support successful reproduction of sargo, gulf croaker, and tilapia..."

(29) This assumes that there would be no other projects designed to "save" the Salton Sea and maintain its level and salinity, when in fact, the Salton Sea Authority, and the *Salton Sea Reclamation Act of 1998* (PL 105-372) are two instruments designed to study, develop, and implement programs to "save" the Sea by maintaining its level and reducing its salinity.

The Salton Sea Authority and Bureau of Reclamation, working as joint leaders with stakeholders and members of the public, have developed five goals that are consistent with the *Salton Sea Reclamation Act of 1998*. These goals include: maintain the Sea as a repository for agricultural drainage; provide a safe, productive environment at the Sea for resident and migratory birds and endangered species; restore recreational use at the Sea; maintain a viable sport fishery at the Sea; and, enhance the Sea to provide economic development opportunities. The statements contained in the DEIR/EIS directly conflict with goals of the *Salton Sea Reclamation Act*.

(30) On page 4-9, 4.5.2 HCP (Salton Sea Portion) Approach 1: Hatchery and Habitat Replacement, one of the mitigation measures identified is to protect "...proposed covered species..." in that "...IID would monitor areas of tamarisk scrub adjacent to the Salton Sea and create or acquire, and protect native tree habitat if monitoring shows a net loss in the amount of tamarisk scrub..." The statement does not indicate whether or not "tamarisk", or salt cedar, is a native species or not. For many years now, the federal, state and local entities in Imperial County have been attempting to develop programs to eradicate this non-native (African-origin) species. The Final EIR/EIS should clarify whether or not the intent of this mitigation measure to protect the wildlife "covered species", but also intends to create, acquire and protect a scrub "tamarisk" species that is very invasive and is a self-propagating species that kills any adjacent native plants, shrubs and trees. If this is the intent to "create or acquire, and protect" the tamarisk/salt cedar growth, is this consistent with the eradication programs by the USF&WS and the California Department of Fish and Game?

### **Response to Comment L1-30**

Refer to the Master Response on *Other—Relationship Between the Proposed Project and the Salton Sea Restoration Project* in Section 3 of this Final EIR/EIS.

### **Response to Comment L1-31**

IID would create or acquire habitat consisting of native trees (e.g., cottonwoods, willows, mesquite, palo verde) to replace the habitat value of tamarisk scrub if there is a net loss in tamarisk adjacent to the Salton Sea. IID would not compensate for a reduction in tamarisk scrub by creating tamarisk-dominated habitat.



(31) The death of the Salton Sea will also have a significant impact on the economy of Imperial County. These impacts include, transient recreational use dollars attributed to the Sea, permanent reduction in residential property values of communities closest to the Sea such as Salton City, Bombay Beach, Desert Shores and Salton Sea Beach. In the Report to the Salton Sea Authority Economic Development Task Force, by the Rose Institute of State and Local Government January 7, 1999, It found that if the Salton Sea were allowed to deteriorate further it would result in loss in economic activity of between \$161 million to \$238 million, a loss in property values of between \$731 million to \$1.29 billion, and immeasurable financial loss in habitat, bio-diversity and quality of live. On the reverse side of that if the sea is restored to a level that recreational activities could be viable then the economic benefits could be as high as \$361 million simply from parking, boating fees, Salton Sea license plates and fishing stamps. The report concludes that the overall economic benefits of the Salton Sea Restoration would be far reaching. Benefits based only on property values within ½ of the sea could rise to \$80 million per year increasing present values from \$1.45 billion to \$2.9 billion. If this economic benefit were to extend beyond the ½ mile to the surrounding lands that increase could double to \$160 million, resulting in a rise from the present value of \$2.9 billion to between \$4.35 billion and \$5.8 billion. These impacts should be addressed and mitigated in the Final EIR/EIS.

#### COLORADO RIVER & OTHER WATERWAYS

(32) It should be noted that the Draft EIR/EIS gives a fair assessment of the impacts to the Lower Colorado River (LCR) basins habitat from Parker Dam to Imperial Dam with the reduction of 200 to 300 KAFY. However, it fails to address the cumulative impacts of the this project along with the Palo Verde Water District's proposed water transfer program, for removing 111,000 acre feet per year of Colorado River water. Palo Verde Water District has proposed through the practice of non-irrigation (fallowing) of "29 percent" of the existing farmland in the Blythe/Palo Verde Valley area over a 35-year period, to divert/transfer to MWD for use by the coastal urban areas. The loss of recharge from the diverting of the 110,000 acre feet of water to the Colorado River together with the proposal for IID to transfer of 200 to 300 KAFY will have a significant impact on the LCR habitat. The result will be a lowering of the Colorado River water level, which in turn will adversely impact residential, environmental, and recreational resources, downstream of the project area. How will these impacts be addressed? These impacts should be fully addressed in the Final EIR/EIS.

(33) The reduction in water may greatly impact the river's habitat. At each step we find impacts, such as at the LCR where there will be impacts to the riverbank and backwater wildlife and fish habitats, the canals and drains and impacts to bank and water habitats and to the Salton Sea. The Draft EIR/EIS does not identify what type of studies or when the studies will be conducted to address cumulative impacts of these two programs on the river habitat both upstream and downstream. When it comes to habitat studies, time of the year is crucial and the EIR/EIS should clarify the nature and timing of such studies.

#### Response to Comment L1-32

Refer to the Master Responses on *Other—Relationship Between the Proposed Project and the Salton Sea Restoration Project*, *Biology—Approach to the Salton Sea Habitat Conservation Strategy*, *Socioeconomics—Property Values and Fiscal Impact Estimates* and *Recreation—Mitigation of Salton Sea Sport Fishery* in Section 3 of this Final EIR/EIS.

#### Response to Comment L1-33

The cumulative impacts of this project along with the Palo Verde Irrigation District project are addressed in the EIR/EIS. Cumulative impacts have also been addressed in the IA EIS and the QSA PEIR. Page 5-9 of the Draft EIR/EIS describes the Palo Verde project and addresses the cumulative impacts of that project along with the Proposed Project. The conclusion of the analysis is that the changes in the River levels would be small when compared to the total volume of water transported annually by the Colorado River. Using a conservative analysis, the maximum potential habitat affected by the reduced flow was calculated and mitigation measures are included. The mitigation would reduce the Proposed Project's contribution to any potential cumulative impact to biological resources to a level that is less than cumulatively considerable. Thus, there will not be an adverse cumulative impact on residential, environmental, and recreational resources downstream from the project area.

For further details on Lower Colorado River issues, please refer to the Master Response on *Biology—Lower Colorado River Mitigation* in Section 3 in this Final EIR/EIS.

#### Response to Comment L1-34

Regarding the cumulative impacts of the two programs, refer to response to Comment L1-33. Regarding types of studies or timing of studies to address cumulative impacts, no additional cumulative impact studies are necessary, as the cumulative impacts of the Proposed Project and the Palo Verde Irrigation District project are addressed in the EIR/EIS.

L1-35 (34) If fallowing occurs, with or without other water conservation techniques used, farm runoff into the New and Alamo rivers will be reduced, thereby impacting areas designated as "very sensitive" for cultural resources. The Draft EIR/EIS appears to focus its mitigation measures with regard to these resources on the Salton Sea, without mentioning the potentially significant effects to the two river areas. Water conservation measures, whether they are constructed or by fallowing, will reduce the flows into and out of the New and Alamo rivers, and impacting cultural "very sensitive" areas.

L1-36 (35) The diversions from the New River for the future Mexicali power plant usage should be taken into account when the Final EIR/EIS is prepared. The document should concentrate on the water transfer and new modeling to predict these foreseeable impacts upon the New River and the Salton Sea.

The Final EIR/EIS should identify the two river watershed areas and mitigate the above concern.

#### FALLOWING

L1-37 (36) Throughout the Draft EIR/EIS fallowing has been presented as both a primary and secondary alternative to acquiring the necessary amount for water transfer with no clear analysis of fallowing or a plan of implementation. The Draft EIR/EIS fails to address the extent of fallowing, who will do the fallowing, or how fallowing will be implemented thus, making it impossible to fully assess the short and long term impacts and to apply the necessary mitigation measures for these impacts.

On page 3.4-12, of the Draft EIR/EIS, it states, "...Under the proposed project, fallowing could be implemented as a conservation measure. If fallowing were the sole conservation measure implemented, up to 50,000 acres could be fallowed to conserve water for transfer...Fallowed acreage is not expected to be permanently taken out of production; however, permanent fallowing of agricultural land could be used to conserve water for transfer. Regardless of the specific fallowing method, no land use impacts would occur because the Proposed Project would not change agricultural zoning and, therefore, it would not conflict with an adopted, local land use plan. Fallowing land would also not divide an established community because fallowed land is consistent with surrounding agricultural land uses...". The Draft EIR/EIS fails to define permanent fallowing and fails to adequately address the maximum acreage necessary to achieve all alternatives and mitigation measures.

The underlying intent and thrust of this Draft EIR/EIS, as submitted for public review, is for permanent fallowing as the method for water conservation and transfer. The IID/SDCWA water transfer could last for 75 years and agricultural farmland and possibly other lands could conceivably be taken out of "permanent" agricultural production and used to transfer water outside of Imperial County.

#### Response to Comment L1-35

Reduced flows into and out of the New and Alamo Rivers should have minimal to negligible impact to archaeological and cultural resources. If flows were dramatically increased, then the possibility that archaeological sites could be eroded would increase. Unlike the Salton Sea where about 16,000 acres of land could be exposed due to reduced flows, reduced flows in the New and Alamo Rivers will not significantly expose new ground, and, the ground exposed would have already been scoured by current flows.

#### Response to Comment L1-36

Please refer to the Master Response on *Other—Cumulative Impacts* in Section 3 of this Final EIR/EIS.

#### Response to Comment L1-37

Information on how fallowing would be implemented is presented in the Draft EIR/EIS in Chapter 2 (Section 2.2.3.4) and throughout the environmental analysis under the Proposed Project and Alternative 4. The amount of information on the implementation of fallowing that is necessary to conduct the environmental analysis is also included in the Draft EIR/EIS in Chapter 2.

For a clarification of permanent vs. rotational fallowing and a discussion of the significant impacts of permanent fallowing, see L1-44. Also, please see Response to Comment L1-49.



(37) The Draft EIR/EIS should have included other fallowing concepts or options. If fallowing is necessary, one possible solution could be the IID to purchase the necessary acreage to be fallowed, fallow only when necessary and lease the land. Another possible solution that should have been addressed in the Draft EIR/EIS as an alternative to fallowing, is to change the existing farming practices to include requiring an across the board reduction in water usage from 6 AFY per cultivated acres of farmland to 5.5 AFY of water usage (based upon 500,000 acres of cultivated land). This reduction could yield up to 250,000 acre feet of water available for the water transfer without fallowing a single acre. Another alternative to fallowing, which should be addressed in the Final EIR/EIS is an analysis of water delivery systems to reduce waste such as, reducing gate times to less than twelve (12) hours, limiting the amount of water per type of crop and imposing penalties for water wasting violations.

(38) The Draft EIR/EIS lists the definition of "Fallowed Land" (in the Section, Acronyms and Glossary, page 12) as, "Land normally used for crop production but left uncultivated for one or more growing seasons". This definition is both inconsistent with the County's General Plan and Land Use Ordinance, along with the State of California Code Section 1011. The Final EIR/EIS should modify the definition to be consistent with the local and state regulations and/or address how the project proponents plan to mitigate these inconsistencies.

(39) Additionally, in a climate where crop rotation and fallowing is the exception to the rule having farmland fallowed will result in an alteration of the existing aesthetic green vistas. The Draft EIR/EIS states, page 3.11-20 (Section 3.11.4.3 "Aesthetics") "Although the additional fallowed acreage could be three times the current amount, it would be distributed through the sub region and would not become an obvious physical feature on the landscape." Fallowing of the land will cause impacts to the aesthetic character of Imperial Valley. Currently, many farms idle the field for part of the year, so the landscape is constantly changing from cropped to fallow acres. No aesthetic impacts are anticipated in this sub region." However, fallowing of the land will in fact cause visual impacts to the aesthetic character of Imperial Valley. Large patches of bare land for extended periods of time created due to fallowing will certainly create an impact in otherwise agricultural areas and degrade the visual character of the area. Therefore, there are indeed some measurable impacts on the aesthetic character of the Valley. The Final EIR/EIS should address these aesthetic impacts and propose mitigation measures to offset these impacts.

(40) The underlying intent and thrust of this Draft EIR/EIS, as submitted for public review, appears to lead to permanent fallowing as the method for water conservation and transfer. The IID/SDCWA water transfer could last for 75 years and agricultural farmland and possibly other land could conceivably be taken out of "permanent" agricultural production and used to transfer water outside of Imperial County.

(41) According to Page 2-30 under the IID/SDCWA Transfer Agreement, fallowing is not a permitted conservation method, and prohibits farmers from "on-farm" fallowing. Under the Quantification Settlement Agreement (QSA), fallowing is deemed not be a permitted

### **Response to Comment L1-38**

The water conservation program, which is part of the Proposed Project, includes a range of on-farm, water delivery system, and fallowing conservation measures. The list of conservation measures included in the Draft EIR/EIS is based on available technology, implementation feasibility, and historical conservation practices in the Imperial Valley. The list, however, is not meant to preclude the use of other feasible conservation measures, including measures that target water conservation by reducing evaporation.

The EIR/EIS takes a bookend approach to addressing the multiple measures that could be used to implement a fallowing program. Regardless of the exact nature of any specific fallowing program, the impacts, including environmental and socioeconomic, are expected to fall within the bookends presented in the EIR/EIS: 300,000 AFY of conservation from efficiency improvements, including both system and on-farm, to 300,000 AFY of conservation through fallowing.

### **Response to Comment L1-39**

See response to comments L1-49, L1-51, and L1-46 for the response to this comment.

### **Response to Comment L1-40**

The fallowing of additional acreage within the IID water service area is not considered to be a significant visual impact. The fallowed acreage will likely be similar in color to the surrounding desert habitat as well as lands that are currently fallowed and farms that are between cropping periods. As such, the fallowed lands will not introduce a new visual element that would be disruptive to the existing landscape and will not constitute a substantial degradation of the visual quality of the area. No mitigation is necessary.

### **Response to Comment L1-41**

Information on how fallowing would be implemented is presented in the Draft EIR/EIS in Chapter 2 (Section 2.2.3.4) and throughout the environmental analysis under the Proposed Project and Alternative 4. The amount of information on the implementation of fallowing that is necessary to conduct the environmental analysis is also included in the Draft EIR/EIS in Chapter 2. For a clarification of permanent vs. rotational fallowing and a discussion of the significant impacts of permanent fallowing, see L1-44. Also, please see Response to Comment L1-49.

#### **Response to Comment L1-42**

The IID/SDCWA Transfer Agreement provides that fallowing would not be a permitted conservation method under IID's contracts with landowners (see Section 14.2 of the IID/SDCWA Transfer Agreement). Thus, unless the anti-fallowing provisions of the IID/SDCWA Transfer Agreement are waived or modified, on-farm fallowing by landowners could not be used to conserve the primary amount to be transferred to SDCWA; however, the IID/SDCWA Transfer Agreement does not prohibit fallowing by IID (as opposed to individual landowners) to conserve the primary amount, or fallowing by either IID or landowners to create the discretionary amount. In addition, the QSA does not prohibit or restrict fallowing as a conservation measure. Thus, all of the water that could be transferred to CVWD and/or MWD could be generated by fallowing. It is also important to note that the Draft EIR/EIS does not confer any permission to the Lead Agencies to undertake the Proposed Project or alternatives. It is only an evaluation of the environmental impacts of doing so.



conservation measure by IID and prohibits individual farmers from fallowing. However, the DEIR/EIS does allow IID to fallow at its own discretion. The QSA and DEIR/EIS seem to be inconsistent on this point and the Final EIR/EIS should clarify these inconsistencies.

(42) On page 2-31 of the Draft EIR/EIS it states, "Any no fallowing rule should preclude a participating landowner from receiving compensation if he/she fallows land for the purpose of transferring water". The Draft EIR/EIS also provides that fallowing is not in keeping with IID Board policies to utilize the water transfer program, "to encourage investment in on-farm irrigation system improvements that increase irrigation efficiency." However, the Draft EIR/EIS also states that fallowing may be a desirable component of the IID water conservation program for a number of reasons. Some of these include: used as a way to reduce farmers' financial risk of participation in conservation programs; easier to implement and manage than other conservation measures; and, a method to preserve the soil. The Final EIR/EIS should address the fact that IID policies do not address fallowing and conservation measures and mitigate it.

#### WILLIAMSON ACT

(43) Over the past two years, Imperial County has worked hard to establish a local Williamson Act Preserve (Act). In just these two (2) years of the estimated 534,329 (Imperial County General Plan) irrigated acres, nearly a fifth, over 100,000 acres (867 parcels of land) have been placed under the Williamson Act Preserve contracts. Under the Williamson Act, the California Legislature (Section 51220) found "...That the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation..." The Final EIR/EIS should address the impact of any fallowing on land subject to the William Act contracts.

(44) Additionally, in the Williamson Act, in terms of farm labor and housing the California Legislature found "...That the agricultural work force is vital to sustaining agricultural productivity; that this work force has the lowest average income of any occupational group in this state; that there exists a need to house this work force of crisis proportions which requires including among agricultural uses the housing of agricultural laborers; and that such use of agricultural land is in the public interest and in conformity with the state's Farm Worker Housing Assistance Plan..."

(45) The water transfer impacts the County's agricultural resources and is not consistent with the intent of the Williamson Act. There needs to be a full analysis of the impacts on the agricultural resources of the Valley by the diverting of water. The Williamson Act sees agriculture use as a "commodity," not merely vacant land. The Act finds that effective stewardship of our agricultural and natural resources are paramount for the future.

#### Response to Comment L1-43

The commenter is correct in stating that fallowing is not consistent with current IID Board policies. However, as stated in the Draft EIR/EIS in Chapter 2, the conservation program included in the Proposed Project is designed to allow IID to implement many different conservation measures and to vary the mix of measures over the term of the Proposed Project. This flexibility allows IID to adapt the program to changing circumstances and still meet its obligation to conserve a fixed annual amount. Flexibility is also important in attracting landowners to agree to participate in the conservation program. Fallowing may be a desirable component of the IID water conservation program for a number of reasons, which are described in the document.

In addition, over the 75-year term of the Proposed Project, the IID Board may change its policies regarding fallowing, and the restrictions on fallowing in the IID/SDCWA Transfer Agreement may also be waived or modified by the parties. To provide maximum flexibility for current and future IID Boards to implement a conservation program with varying conservation measures, the Proposed Project includes, for purposes of the environmental assessment set forth in this Draft EIR/EIS, the potential use of fallowing to generate some, all, or none of the required conserved water.

#### Response to Comment L1-44

IID recognizes that Imperial County has elected to develop an agricultural preserve pursuant to the California Land Conservation Act, better known as the Williamson Act, California Government Code Section 51220 et seq. We also acknowledge the legislative findings cited by the commentator. The Williamson Act is described in Section 3.5.2.2 of the Draft EIR/EIS as part of the state laws applicable to agricultural resources.

The Draft EIR/EIS analyzes the impacts of the Project on the broad category of agricultural resources, which the Williamson Act is designed to protect. The Draft EIR/EIS describes the potential for fallowed land to be converted to non-agricultural use in Section 3.5.4.1 and applies significance criteria (described in Section 3.5.4.2) that identify significant impacts to agriculture. As noted in the Draft EIR/EIS, if fallowing were used as the only method to conserve the maximum amount of water anticipated by the Project, the following acreages would need to be fallowed: 50,000 acres for the water to be transferred

### **Response to Comment L1-44 (continued)**

to others; 25,000 acres to generate water to offset changes in inflow to the Salton Sea pursuant to the Salton Sea Habitat Conservation Strategy; and an additional 9,800 acres for compliance with the IOP. The HCP may also result in the use of up to 700 acres of agricultural land for habitat creation or enhancement.

The Draft EIR/EIS finds that conservation by rotational fallowing (for no more than three consecutive years) will not result in a significant impact to agricultural resources. The Draft EIR/EIS notes that rotational fallowing is consistent with existing agricultural practices and that approximately 20,000 acres are fallowed each year in the Imperial Valley without the Project. However, the Draft EIR/EIS finds that fallowing for longer periods, if it causes the reclassification of prime farmland or the conversion of agricultural land to a non-agricultural use, would be a significant impact to agricultural resources. The only identified mitigation measure for this significant impact is to prohibit long-term or permanent fallowing. This significant impact on agricultural resources does not appear to be consistent with the intent or objectives of the Williamson Act.

The Draft EIR/EIS also describes the socioeconomic impacts of fallowing in Section 3.14.

### **Response to Comment L1-45**

We acknowledge the statutory findings cited by the commenter.

### **Response to Comment L1-46**

As noted above, the Draft EIR/EIS reviews the impacts of the Project on agricultural resources and socioeconomic effects of the Project. The Draft EIR/EIS recognizes the historical use of rotational fallowing in the Imperial Valley and concludes that water conservation through short-term or rotational fallowing will not have a significant impact on agricultural resources.

We disagree with the comment that short-term or rotational fallowing is not permitted by, or is inconsistent with, the Williamson Act. The Williamson Act does not require the continuous cultivation of agricultural lands within the preserve or preclude the fallowing of those lands for reasonable time periods.

Under the statutory criteria, the eligibility of land for a Williamson Act contract depends primarily on soil type and capability, rather than the level of productivity. No provision of the Williamson Act prohibits the fallowing of enrolled land. The Act permits "agricultural use," which includes recreational use and open-space use, as well as any "compatible use," which is defined as follows:

"'Compatible use' is any use determined by the county or city administering the preserve pursuant to Section 51231, 51238, or 51238.1 or by this act to be compatible with the agricultural, recreational, or open-space use of land within the preserve and subject to contract. 'Compatible use' includes agricultural use, recreational use or open-space use unless the board or council finds after notice and hearing that the use is not compatible with the agricultural, recreational or open-space use to which the land is restricted by contract pursuant to this chapter." [Gov't. Code § 51201(c)]

The state statute provides principles of compatibility which govern compatible use decisions by local agencies [Gov't. Code § 51238.1(a)]. These principles indicate that an incompatible use is one which compromises the long-term productive agricultural capability of the land. This is reasonable because rotational fallowing is often used to rest and enrich a field for purposes of enhancing productivity. Short-term fallowing also does not conflict with the legislative policy, as codified in Government Code Section 51220.5, that the purpose of the compatibility requirements is to prevent agricultural land from becoming over-populated and urbanized. In response to our inquiry, staff analysts at the California Department of Conservation confirmed that fallowing is allowed under the Act.

Moreover, the form of contract submitted by the County of Imperial to the Department of Conservation as its standard form does not prohibit fallowing. Rather, in its recitals, it states that the Owner and County desire:



### **Response to Comment L1-46 (continued)**

". . . to limit the use of said Property to agricultural and compatible uses in order to discourage premature and unnecessary conversion of land to urban use, and recognize that such land has substantial value to the public as open space and the preservation of such land in such use constitutes an important physical, social, aesthetic, and economic asset to County."

Fallowing is consistent with these purposes.

Imperial County's "Rules of Procedure to Implement the California Land Conservation Act of 1965" also do not prohibit fallowing. Section C.2. of the Rules lists a number of agricultural and compatible uses, which include: airstrips, gravel pits, ranch equipment storage, truck parking, and auction houses. Given the nature of these specified uses, it seems likely that fallowing would be considered an agricultural or compatible use under the County's Rules.

"Agricultural use" as permitted under the Williamson Act includes "open-space use," as described by the Commenter. We note that fallowing was assessed in the Draft EIR/EIS because CEQA requires that consideration be given to the assessment of project changes, project alternatives, and mitigation measures that could reduce the significant effects of the Proposed Project. The Draft EIR/EIS recognizes that fallowing will reduce the impacts of the Project to the Salton Sea, including impacts to endangered species and other biological resources, air quality and recreation. Thus, short-term or rotational fallowing in connection with the Project is consistent with the intent of open-space use to "provide essential habitat for wildlife."

Entry into a Williamson Act contract is voluntary on the part of the landowner. Because of the tax benefits accruing to the owner of enrolled land, however, cancellation of a Williamson Act contract prior to its expiration date is subject to restrictions and typically requires both extraordinary circumstances and the owner's consent [Gov't. Code § 51282]. The proposed on-farm conservation program, including fallowing by landowners, will also be voluntary. Thus, the Project will not cause or require the termination of any Williamson Act contract or trigger payment of Williamson Act penalties. If a landowner enrolled in the Williamson Act preserve seeks to participate in the voluntary conservation program, he would have to ensure that the methods of conservation used do not violate Williamson Act restrictions or the provisions of his contract with the County. As discussed above, there are no provisions of the Williamson Act that expressly prevent the fallowing of land subject to a Williamson Act contract.

Government Code Section 51201(o) defines open-space use as "the use or maintenance of land in a manner that preserves its natural characteristics, beauty, or openness for the benefit and enjoyment of the public, to provide essential habitat for wildlife, or the solar evaporation of seawater in the course of salt production for commercial purposes". The Final EIR/EIS needs to address the fact that fallowing would not be eligible under the Williamson Act and further address who would pay the penalties associated with removing lands currently under Williamson Act contract.

#### **Response to Comment L1-47**

See the response to Comment L1-46 regarding whether fallowing affects eligibility for, or would be a violation of, a Williamson Act contract. Again, participation by landowners in the conservation program will be voluntary, not mandatory, and will not necessarily preclude future participation in the Williamson Act preserve.

(46) If the proposed project causes farmland to go fallow, then not only would land that currently participates in the Williamson Act not be eligible, but any land that was fallow could not be considered for future induction to the Williamson Act. Additionally, if any property owner wished to exchange land that is currently in the Williamson Act in order to have that Williamson Act contract rescinded pursuant to Government Code Section 51256, the water availability of that land would have to be considered. Under the proposed project, the availability of water to any land in the Imperial County would be significantly reduced. This impact should be addressed and mitigated in the Final EIR/EIS.

Contrary to the commenter's assertion, the Draft EIR/EIS concludes that the conservation program will not affect the delivery of water to lands not voluntarily enrolled in the conservation program (see Section 3.1 in the Draft EIR/EIS).

#### **Response to Comment L1-48**

(47) The inability to include more land in the Williamson Act would have several detrimental impacts. These impacts include the loss of revenue for the County, which will collect an estimated \$500,000 in subvention after only two years of participation, as well as loss of the ability to reduce property tax liability for the property owners themselves. Furthermore, the Williamson Act is a conservation program that discourages "leapfrog" development and premature loss of farmland. The proposed project directly conflicts with the Williamson Act in that permanent fallowing is the premature loss of farmland, and if a land owner is unable to enroll in the Williamson Act due to fallowed land, this constricts the ability of the County to establish larger and contiguous agricultural preserves.

To partially compensate for local property tax reductions applied to lands enrolled in the Williamson Act preserve, the state pays each county and city participating in the program an annual "subvention" payment based on the amount of acreage and the quality of the agricultural or open space land enrolled, pursuant to the Open Space Subvention Act of 1971. However, land not under a Williamson Act contract is taxed at its full assessed value, resulting in a greater economic benefit to the County than the reduced return available from Williamson Act tax payments and the partial subvention payments from the state. The Draft EIR/EIS describes the socioeconomic impacts of fallowing in Section 3.14.